June 2, 2006

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd floor
Boston, MA 02110

Re: Berkshire Gas Company, D.T.E. 06-27

Dear Ms. Cottrell:

On February 28, 2006, pursuant to M.G.L. c. 164, § 94A, the Berkshire Gas Company ("Berkshire" or "Company") filed with the Department of Telecommunications and Energy ("Department") a petition for approval and authorization to enter into a gas sales agreement ("Proposed Agreement") with Coral Energy Resources, L.P. ("Coral"). On March 9, 2006, the Department opened this proceeding and the Attorney General intervened on March 22, 2006. Pursuant to the hearing officer's schedule, the Attorney General now submits this letter as his Initial Brief.

I. STANDARD OF REVIEW

The Department applies a "public interest" standard of review to evaluate a gas utility's options for acquiring of commodity resources and acquisition of capacity under M.G.L. c. 164, § 94A. *Bay State Gas Company*, D.T.E. 98-79, at 1-2 (1998); *Commonwealth Gas Company*, D.P.U. 94-174A at 27 (1996); *KeySpan Energy Delivery New England*, D.T.E. 04-9 at 10, 19-20 (2004). The Company must show that:

> [t]he acquisition (1) is consistent with the company's portfolio objectives, and (2) compares favorably to the range of alternative options reasonably available to the company and its customers, including releasing capacity to customers migrating to transportation. In establishing that a resource is consistent with a company's portfolio objectives, the company may refer to the portfolio objectives established in a recently approved resource plan or in a recent review of its supply contracts under Section 94A, or may describe its objectives in the filing accompanying the resource proposal.

D.T.E. 98-79, at 1-2. The Department has jurisdiction to review the Proposed Agreement under M.G.L. c. 164, § 94A, because it covers a period longer than one year.

II. ARGUMENT

A. The Company's Proposal Could Result In Costly Excess Capacity

The Company acquired more capacity than justified by its long-range forecast. Its most recently filed long-range forecast, submitted in docket D.T.E. 05-7, shows an existing design day surplus throughout the forecasting period. *See* Exhibit ("Exh.") DTE-1-1. The Company witness testified that the acquisition of additional resources, the Proposed Agreement and the ConneXion Agreement, would result in excess capacity. Evidentiary Hearing Transcript ("Tr.") at 27-29; *see also* Exh. DTE-1-1, and Attachment. Resources will exceed design day sendout by approximately 7 percent for 2006/07, 12 percent in 2007/08, and 5 percent in 2008/09. *See* Exh. DTE-1-1, and Attachment.

If the Company cannot sell or otherwise use the excess capacity, then customers would experience financial harm because the Company will charge them for the excess capacity through a cost of gas adjustment ("CGA") proceeding. *See* Tr. at 28, lines 9-13. The Department will not know whether and to what extent customers experience financial harm until the Proposed Agreement comes into effect, and the Department has an opportunity to review the Company's management of its resource portfolio in CGA proceedings or in a rate case. *See Commonwealth Gas Company*, D.P.U. 92-159, at 137, FN 117 (1995).

If the Department approves the Proposed Agreement, the Department should review the Company's management of its resource portfolio in future CGA approvals to determine whether customers experience financial harm because they have had to pay for this excess capacity. This CGA review would be consistent with the Department's ruling in *Commonwealth Gas Company*, D.P.U. 94-174-A, at 30 (1996), where the Department ruled that it would investigate whether a company imprudently acquired excess capacity in a rate case or CGAC proceeding. *Id.*

B. The Department Should Consider The Company's Failure To Mitigate Costs When Acquiring Replacement Capacity

The Proposed Agreement will partially replace a peaking supply contract the Company lost. Exh. BG-1 Redacted, at2, lines 5-15. During the evidentiary hearing on May 23, 2006, the Department temporarily suspended cross examination on the prudence of the Company's actions to mitigate costs and financial harm to customers resulting from the loss of that contract. Tr. at 38-51. The Department temporarily suspended the cross examination to promote efficiency and until it determines whether the cross examination falls within the scope of the proceeding.[1] *Id.*

[1] Pursuant to the procedural schedule established by the hearing officer, the Company will submit a written motion on the scope of the proceeding on June 9, 2006, and the Attorney General will submit an opposition motion on June 20, 2006. The Attorney General now recommends that the Department review the Company's actions and he will fully respond to the Company's position when he receives its written motion and memorandum.

The record evidence thus far compels a review of the Company's actions to determine whether, in fact, the Company acted to mitigate costs to customers. The Company consistently provided conflicting explanations for its actions, and demonstrated an unwillingness to fully explain its actions that seemingly cost customers to pay more for gas.[2] *See* Exh. AG-1-18, Attachment; Exh. AG-1-18, Supplemental; Exh. AG-2-7; Exh. AG-2-8.

For these reasons, the Department should adopt the recommendations in this Initial Brief.

Respectfully submitted,

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ATTORNEY GENERAL

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Dated: June 2, 2006

cc: John J. Keene, Jr., Esq., Hearing Officer
Service List

[2] The Company has indicated it will file a motion to exclude consideration of its actions to te related to the lost peaking supply contract from the scope of this proceeding. to exclude this issue from review here. Contradicting the Company's position that those issues fall beyond the scope of the proceeding, the Company also indicated that it may file a motion for summary judgment, in essence, arguing that the Company acted prudently and mitigated damages to customers. *See* Tr. at 38-51.